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Tenth Street Residential Association v. City of Dallas: Standing on Shaky Ground, Gentrification Threatens Neighborhood with Limited Legal Remedies for Fair Housing Organizations

I. INTRODUCTION

Following the ratification of the Emancipation Proclamation in Texas on June 19, 1865, predominantly Black communities occupied by former slaves, known as Freedmen's Towns, developed across the state.[1] Today, the last remaining Freedmen's Town in Dallas, Texas, is the Tenth Street Historical District (Tenth Street).[2] Tenth Street is

1. Nathan Rivet, *Freedmen's Town, Houston, Texas (1865-)*, BLACKPAST (Aug. 9, 2017), https://www.blackpast.org/african-american-history/freedmens-town-houston-texas-1865/ [https://perma.cc/ZFW6-TGUT].

2. Tenth St. Residential Ass'n v. City of Dallas, 968 F.3d 492, 495-96 (5th Cir. 2020). *See generally* DeNeen L. Brown, *Black Towns, Established by Freed Slaves After the Civil War, Are Dying Out*, WASH. POST (Mar. 27, 2015), https://www.washingtonpost.com/local/black-towns-established-by-freed-slaves-after-civil-war-are-dying-out/2015/03/26/25872e5c-c608-11e4-a199-6cb5e63819d2_story.html?noredirect=on [https://perma.cc/5P WM-9TGM] (discussing generally Freedmen's Towns). It is estimated that ownership of Tenth Street property by freedmen began in January of 1888. Robert Swann, *Anecdotes and*

represented by the Tenth Street Residential Association (TSRA), a neighborhood association comprised of homeowners whose mission is to "prevent speculation and gentrification" of its neighborhood.[3] Faced with widespread demolitions of homes in the neighborhood, Tenth Street has long struggled to maintain its historic nature, despite being designated by the City as a Landmark Historic District in 1993.[4]

Prior to 2010, the demolitions of Dallas's historic homes were regulated by Dallas City Code section 51A-4.501(h).[5] In 2010, the ordinance was revised to encompass only houses and structures greater than 3,000 square feet, and the City added Dallas City Code section 51A-4.501(i) to create an expedited procedure for the demolition of homes under 3,000 square feet.[6] Since Dallas City Code section 51A-4.501(i) went into effect, seventeen demolitions have been carried out in Tenth Street.[7] Meanwhile, only one demolition was carried out across all six of Dallas's "predominantly white[,] non-Hispanic" neighborhoods during the same time frame.[8] In order to further incentivize the restoration of dilapidated historic homes, the City also created a program that granted eligible owners a tax exemption proportionate to the value of the structure.[9] Due to the

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Evidence, TENTH ST. LIFE (Feb. 21, 2016), http://tenthstreetlife.com/anecdotes-evidence/ [https://perma.cc/83CC-ZB8W].

3. *Tenth St.*, 968 F.3d at 496, 500. Gentrification is defined by *Merriam-Webster* as "a process in which a poor area (as of a city) experiences an influx of middle-class or wealthy people who renovate and rebuild homes and businesses and which often results in an increase in property values and the displacement of earlier, usually poorer residents." *Gentrification*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/gentrification [https://perma.cc/UD8M-WACH] (last visited May 17, 2021). However, gentrification is a relatively new term, and the nuances of the definition are still being debated. Kea Wilson, *What Does "Gentrification" Really Mean?*, STRONG TOWNS (Aug. 2, 2017), https://www.strongtowns.org/journal/2017/8/1/what-does-gentrification-really-mean [https://perma.cc/FGS9-VGK2].

4. *Tenth St.*, 968 F.3d at 496.

5. *Id.* Dallas City Code section 51A-4.501(h) allowed for the demolition of a home only if (1) it is a "major and imminent threat to public health and safety," (2) "the demolition . . . is required to alleviate the threat," and (3) the home does not contribute to "the historic overlay district because it is newer than the period of historical significance." DALL. CITY CODE § 51A-4.501(h) (2020).

6. *Tenth St.*, 968 F.3d at 496. Under the new ordinance, the demolishing party must only prove that the structure is an urban nuisance to receive a certificate of demolition. *Id.* An urban nuisance is one that "is dilapidated, substandard, or unfit for human habitation and a hazard to public health, safety, and welfare." *Id.* (quoting DALL. CITY CODE § 27-3(40)(A)).

7. *Id.* at 497.

8. *Id.*

9. *Id.* The program granted homeowners a tax exemption of 100% of the property's value if the restoration cost was greater than 25% of the value of the structure pre-restoration. *Id.*

relationship between tax exemption and property value, the average tax exemption for a Tenth Street resident was $2,430 compared to $300,000 in a predominantly white Dallas neighborhood.[10]

Alleging violations under the Fair Housing Act (FHA) and the Equal Protection Clause, TSRA brought suit in the United States District Court for the Northern District of Texas seeking injunctive relief against the City to stop demolitions under Dallas City Code section 51A-4.501(i).[11] TSRA claimed that Dallas City Code section 51A-4.501(i) disproportionately impacted Tenth Street residents and that the tax exemption program exacerbated the effects of the statute.[12] Under a theory of organizational standing, TSRA argued that Dallas City Code section 51A-4.501(i) hindered its mission to prevent the displacement of its residents and the continued gentrification of Tenth Street as well as caused its member pool to shrink.[13] Under a theory of associational standing, TSRA contended that the demolitions posed an "imminent threat to each member's home" and had led to a reduction in property values and a poor ambiance in the neighborhood.[14]

Upon the City's motion to dismiss, the district court rejected TSRA's theories of both associational and organizational standing.[15] In addressing TSRA's theory of organizational standing, the court held that the organization did not put forth an injury concrete and discrete enough to meet the standard set out by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.[16] Next, the court held that TSRA did not have associational standing, largely because it did not find that the threat of demolition was imminent or that the alleged injuries were traceable to the City.[17]

Consequently, the district court dismissed both of TSRA's claims for lack of jurisdiction.[18] TSRA appealed the dismissal to the Fifth

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10. *Id.* at 498 n.1. This data was taken between 2014 and 2018. *Id.*

11. Tenth St. Residential Ass'n v. City of Dallas, No. 3:19-CV-00179-N, 2019 WL 2616999, at *2 (N.D. Tex. June 25, 2019), *aff'd*, 968 F.3d 492 (5th Cir. 2020).

12. *Id.* at *1.

13. *Id.* at *2.

14. *Tenth St.*, 968 F.3d at 500.

15. *Tenth St.*, 2019 WL 2616999, at *2-3.

16. *Id.* at *3. The court also rejected TSRA's theory of associational standing, noting that TSRA failed to prove all three elements of constitutional standing. *Id.* Importantly, the court noted that TSRA did not prove the element of injury-in-fact because the court did not believe that the threat of demolition constituted an imminent injury to TSRA. *Id.*

17. *Id.*

18. *Id.* at *4.

Circuit.[19] In the noted case, the Fifth Circuit affirmed the district court's decision and held that TSRA did not have organizational or associational standing.[20]

While the court's decision was consistent with the narrow view of the injury-in-fact requirements for organizational standing accepted by the Fifth Circuit, the decision failed to consider the impacts on future gentrification and FHA cases.[21] Part II of this Note discusses the development of a circuit split in the application of *Havens Realty Corp. v. Coleman*, the Supreme Court case which defined the element of injury-in-fact in organizational standing cases. Part III explores how the Fifth Circuit strictly limited Article III standing in the noted case. Lastly, Part IV demonstrates how the strict definition of injury created by the Fifth Circuit, coupled with the challenges of associational standing, limits opportunities for recovery in gentrification cases.

II. BACKGROUND

The idea that organizations may have standing to sue in their own right is well-settled by the United States Supreme Court.[22] In order to demonstrate Article III standing, a plaintiff, whether an individual or an organization, must demonstrate (1) an injury-in-fact that is "concrete and particularized," (2) that the injury is traceable to the defendant's actions, and (3) that the injury is likely redressable by a favorable decision.[23] However, it is far less clear what injury an organization must have suffered in order to satisfy the "injury in fact" element of Article III standing.[24]

The Supreme Court first addressed the issue of organizational standing in *Havens Realty Corp. v. Coleman*.[25] In *Havens*, the Supreme Court set forth the idea that organizations could have Article III standing in their own right ("organizational standing") rather than just through their capacity as representatives of their members ("associational standing" or "representative standing").[26] Specifically

19. *Tenth St.*, 968 F.3d at 498.
20. *Id.* at 500.
21. *See id.* at 500-02.
22. *See* Havens Realty Corp. v. Coleman, 455 U.S. 363, 378-79 (1982).
23. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992).
24. *See* Fair Hous. Council, Inc. v. Vill. of Olde St. Andrews, Inc., 210 F. App'x 469, 473-75 (6th Cir. 2006) (discussing the different standards circuit courts have developed for the "injury in fact" element of Article III standing).
25. *Havens*, 455 U.S. at 379.
26. *Id.* at 378-79.

addressing the element of injury-in-fact, the Court held that an organization has suffered an injury-in-fact sufficient to satisfy Article III standing if the defendant's actions have "perceptibly impaired" the organization's ability to conduct its business with a "consequent drain on the organization's resources."[27] The petitioner, HOME, a nonprofit whose mission was to advance equal opportunity housing, offered housing counseling services and investigated housing discrimination complaints.[28] In a discrimination action against a landlord, HOME alleged that the landlord's racial steering practices frustrated its mission and subsequently placed a drain on its resources.[29] In holding that HOME had standing in its organizational capacity, the Court reasoned that there was no question that the landlord's actions resulted in an injury-in-fact because it constituted more than merely "a setback to the organization's abstract social interests."[30] Following the Court's decision, circuit courts applied the standard set forth by *Havens* inconsistently, creating the circuit split that exists today.[31]

A. With Vague Standard, Courts Split on Injury-in-Fact

In the years since the *Havens* decision, a split has developed in what constitutes an injury-in-fact within the context of organizational standing, resulting in both a narrow and a broad view.[32] In FHA cases, circuit courts generally agree that an organization can demonstrate standing where it can show a diversion of resources from other projects or a devotion of additional resources to address the defendant's action.[33] Yet, this is where the consensus stops. With limited guidance from *Havens*, circuit courts diverged in their applications of the standard for injury under a theory of organizational standing.[34]

The broad application of *Havens*, accepted by the United States Courts of Appeals for the Second, Seventh, and Eighth Circuits, allows organizations to demonstrate injury-in-fact by showing only that the organization used resources toward litigation to address the defendant's

27. *Id.* at 379.
28. *Id.* at 368.
29. *Id.* at 369.
30. *Id.* at 379.
31. *See* Fair Hous. Council, Inc. v. Vill. of Olde St. Andrews, Inc., 210 F. App'x 469, 473-75 (6th Cir. 2006).
32. *Id.* (describing this circuit split).
33. *See id.* at 474; Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers, 141 F.3d 71, 78 (3d Cir. 1998).
34. *See Vill. of Olde St. Andrews*, 210 F. App'x at 473-75.

actions.[35] For example, the Second Circuit noted that an organization can show injury-in-fact merely by demonstrating a perceptible impairment of its activities.[36] Further, the Second Circuit has previously found that an organization has suffered an injury where it devoted substantial blocks of time to litigating that particular action.[37] Still, other circuits establish injury-in-fact through pre-litigation investigation costs but require more than the diversion of resources toward litigation.[38] In a slightly narrower application of *Havens*, the Sixth Circuit held that, while an organization must expend resources independent of litigation, pre-litigation resources spent investigating the practices of the defendant were sufficient to establish standing.[39]

The United States Court of Appeals for the District of Columbia, Third, and Fifth Circuits have adopted a much narrower view of *Havens*.[40] In *Spann v. Colonial Village, Inc.*, the D.C. Circuit articulated this narrow application, refusing to join its sister circuits in holding that the expenses associated with litigation necessarily grant standing to an organization.[41] Concerned that organizations will "manufacture" an injury by spending money on litigation, the D.C. Circuit held that an organization may establish standing under Article III if it is forced to devote resources, independent of its lawsuit, to address the defendant's actions.[42] The organization in *Spann* alleged that it had to devote resources to neutralize the impacts of the defendant's illegal actions and educate the public on the illegal behavior, injuries deemed to be "independent of its suit."[43]

Similarly, the United States Court of Appeals for the Third Circuit shared these concerns and adopted the *Spann* decision in *Fair Housing*

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35. *See* Moya v. U.S. Dep't of Homeland Sec., 975 F.3d 120, 130 (2d Cir. 2020) (holding "that a plaintiff needs to allege only 'some perceptible opportunity cost' from the 'expenditure of resources that could be spent on other activities.'" (quoting Nnebe v. Daus, 644 F.3d 147, 157 (2d Cir. 2011))); Vill. of Bellwood v. Dwivedi, 895 F.2d 1521, 1526 (7th Cir. 1990) (holding that a fair housing agency can establish standing simply by diverting time and money to legal efforts addressing the defendant's discrimination); Ark. ACORN Fair Hous., Inc. v. Greystone Dev., Ltd., 160 F.3d 433, 434 (8th Cir. 1998) (noting that a deflection of resources to legal efforts is sufficient to constitute an injury).

36. *Nnebe*, 644 F.3d at 157.

37. Ragin v. Harry Macklowe Real Est. Co., 6 F.3d 898, 905 (2d Cir. 1993).

38. *See Vill. of Olde St. Andrews*, 210 F. App'x at 475.

39. *Id.*

40. *See infra* notes 41-61 and accompanying text.

41. 899 F.2d 24, 27 (D.C. Cir. 1990).

42. *Id.*

43. *Id.*

Council of Suburban Philadelphia v. Montgomery Newspapers.[44] The majority held that the *Spann* decision was merely better-reasoned than the broad approach, noting that the court should not adopt a standard where the injury flows from the requirements of filing a lawsuit.[45] Judge Nygaard, concurring in part and dissenting in part, agreed with the majority in finding that more than attorney's fees are required to find that the organization suffered an injury, but argued that the bar should not be set so high as to "nullify the private enforcement provisions of the [FHA]."[46] Noting the important role of private organizations in the enforcement of the FHA, Judge Nygaard concluded that organizations may establish standing for "enforcement activities, other than the filing of . . . lawsuit[s]" such as non-litigation methods of legal pressure, investigations, and administrative proceedings, seemingly aligning himself with the Sixth Circuit's intermediate approach.[47] The Fifth Circuit, however, takes the narrowest approach of them all.

B. Fifth Circuit Adopts Narrow Interpretation and Raises the Bar

Like the D.C. and Third Circuits, the Fifth Circuit adopted the *Spann* interpretation of *Havens*, holding that resources directed toward litigation or legal counseling to address the defendant's actions alone do not establish standing.[48] Since adopting the *Spann* interpretation, a series of Fifth Circuit decisions further narrowed the ways in which an organization can demonstrate an injury-in-fact when unrelated to litigation.[49] In *Louisiana ACORN Fair Housing v. LeBlanc*, the Fifth Circuit held that an organization whose staff testified that they had spent over ninety-six hours working on a case to address the defendant's violations of the FHA did not have standing.[50] The court reasoned that the staff's testimony was mere conjecture and it could not prove a "drain on its resources" so significant that the staff "'stopped everything else' and devoted all attention to the litigation in question."[51]

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44. Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers, 141 F.3d 71, 79 (3d Cir. 1998).

45. *Id.* at 80.

46. *Id.* at 87-88 (Nygaard, J., concurring in part and dissenting in part).

47. *Id.*

48. Ass'n for Retarded Citizens of Dall. v. Dall. Cnty. Mental Health & Mental Retardation Ctr. Bd. of Trs., 19 F.3d 241, 244 (5th Cir. 1994).

49. *See infra* notes 50-61 and accompanying text.

50. 211 F.3d 298, 305 (5th Cir. 2000).

51. *Id.* (quoting Alexander v. Riga, 208 F.3d 419, 427 n.4 (3d Cir. 2000)).

The court's decision suggests not only that the bar for proving "significant resources" is incredibly high but also that an organization must be able to demonstrate that other specific projects have been put on hold as a result of the defendant's actions.[52]

A decade later, in *NAACP v. City of Kyle*, the Fifth Circuit held that a lobbying organization did not have standing where it commissioned a $15,000 study to prepare for litigation related to the City's ordinance that allegedly violated the FHA, held a meeting to discuss the impacts, internally communicated, and generally researched the discriminatory policy.[53] In addition to noting that the organization did not allege any specific projects had been put on hold, as in *Louisiana ACORN*, the court reasoned that the organization could not prove an injury-in-fact because the activities described as its injury did not differ from its routine lobbying activities.[54] In this case, the Fifth Circuit created a standard where an organization may not prove an injury-in-fact if it expends resources in a way that does not differ from its normal activities, regardless of how great the expenditure.[55]

Years later, in *OCA-Greater Houston v. Texas*, the Fifth Circuit clarified its interpretation of *Havens*.[56] The court explicitly distinguished between cases in which the injury occurred pre-litigation and was litigation-related from cases where the injury occurred pre-litigation but was unrelated.[57] The Fifth Circuit held that an organization that took steps to mitigate the effects of voter suppression by the State of Texas had standing because its injury did not occur "with a view toward litigation."[58] The Fifth Circuit reasoned that, while OCA's injury was small, "it need not measure more than an 'identifiable trifle'" so long as it is unrelated to litigation.[59] Between the adoption of the *Spann* interpretation and the holding in *OCA-Greater Houston*, the Fifth Circuit strictly prevented future claims of organizational standing based on both litigation expenses and anything litigation-related.[60] Thus, in the years since the adoption of the *Spann*

52. *See id.*
53. 626 F.3d 233, 238 (5th Cir. 2010).
54. *Id.*
55. *See id.*; *La. ACORN*, 211 F.3d at 305.
56. 867 F.3d 604, 612 (5th Cir. 2017).
57. *Id.*
58. *Id.*
59. *Id.* (quoting Ass'n of Cmty. Org. for Reform v. Fowler, 178 F.3d 350, 358 (5th Cir. 1999)).
60. *See OCA-Greater Hous.*, 867 F.3d at 612; Spann v. Colonial Vill., Inc., 899 F.2d 24, 27 (D.C. Cir. 1990).

decision, the Fifth Circuit developed a narrow set of circumstances in which an organization can satisfy Article III standing, one made more limited by the noted case.[61]

III. COURT'S DECISION

In the noted case, the Fifth Circuit followed its own precedent, narrowly interpreting *Havens* and applying the standards developed in *Louisiana ACORN* and *City of Kyle*.[62] In affirming the district court's decision, the Fifth Circuit first found that TSRA did not have organizational standing to bring a claim against the City.[63] Next, the court dismissed TSRA's claims based on associational standing as well.[64] Finally, Judge Davis concurred in the judgment of the majority on different grounds.[65]

The court opened its discussion by examining TSRA's claim of organizational standing.[66] In addressing this issue, the court applied the test developed in *City of Kyle* in conjunction with that developed in *Louisiana ACORN*.[67] First, the Fifth Circuit held that, like in *City of Kyle*, TSRA's activities related to addressing the impacts of Dallas City Code section 51A-4.501(i) did not "differ from [its] routine . . . activities" and therefore could not confer standing.[68] The court reasoned that the actions that TSRA took in its anti-demolition campaign, including attending meetings and working to intervene as an interested party in a lawsuit, were aligned with TSRA's overall mission of preventing speculation and gentrification of Tenth Street.[69]

Second, the court turned to the issue of whether TSRA's actions constituted the diversion of "significant resources" as described in *Louisiana ACORN*.[70] Comparing the present case to *Louisiana ACORN*, where meetings, internal communications, and significant time spent on addressing an alleged discriminatory act did not

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61. *See supra* notes 49-60 and accompanying text; *infra* notes 62-80 and accompanying text.

62. *See* Tenth St. Residential Ass'n v. City of Dallas, 968 F.3d 492, 500 (5th Cir. 2020).

63. *Id.* at 503.

64. *Id.*

65. *Id.* at 503-04.

66. *Id.* at 500.

67. *Id.*; NAACP v. City of Kyle, 626 F.3d 233, 238 (5th Cir. 2010); La. ACORN Fair Hous. v. LeBlanc, 211 F.3d 298, 305 (5th Cir. 2000).

68. *Tenth St.*, 968 F.3d at 500 (quoting *City of Kyle*, 626 F.3d at 238).

69. *Id.*

70. *Id.*

constitute "significant resources," the Fifth Circuit held that the resources used by TSRA could not be considered significant.[71] The court reasoned that TSRA provided no evidence that its members were "required to forego other projects or causes."[72] Thus, the court held that TSRA had not suffered an injury sufficient to establish standing.[73]

Having concluded that TSRA's alleged injuries were insufficient for organizational standing, the court then turned to the issue of associational standing.[74] The court first dismissed TSRA's claim that its members were threatened by demolition.[75] Because no houses in the Tenth Street neighborhood were in the demolition approval process, the court reasoned that there was no imminent threat of demolition and the possibility of harm was only "remote."[76] The court further supported this conclusion by noting that the City had passed a resolution that it would no longer provide funds to support demolitions in the Tenth Street neighborhood, making the threat of imminent demolition even less likely.[77] The court then addressed the remaining injuries alleged by TSRA, concluding that the depreciation of value and aesthetics of the Tenth Street neighborhood was not caused by the implementation of Dallas City Code section 51A-4.501(i) nor the tax incentive program, and therefore was not redressable by the requested injunctive relief.[78] Ultimately, the Fifth Circuit held that TSRA could not demonstrate standing and affirmed the district court's dismissal of the case.[79]

Finally, in a short concurrence, Judge Davis noted that he agreed with the holding that TSRA does not have standing but would have addressed the argument entirely because of a failure to demonstrate "a

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71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.* at 500-01. TSRA argued that its members suffered a threat of demolition as well as depreciation in the value and aesthetics of the neighborhood. *Id.* at 501.
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.* at 502-03. In holding that TSRA's injuries were not traceable nor redressable, the Fifth Circuit reasoned, while TSRA demonstrated evidence that the rate of approved demolitions increased after section 4.501(i) was adopted, the rate of demolitions actually carried out decreased. *Id.* The court stated that, from 1993 to 2010, demolitions were conducted at a rate of 3.2 per year. *Id.* at 502. However, from 2010 (the year that the City implemented section 4.501(i)) to 2019, the City conducted only 1.4 per year. *Id.* at 502. It is on these facts that the court based its holding. *Id.* at 502-03.
79. *Id.* at 504.

threatened, imminent injury" as there were no pending applications for demolition of Tenth Street residences.[80]

IV. ANALYSIS

In the noted case—on an issue of first impression regarding gentrification and organizational standing—the Fifth Circuit failed to consider the implications of its holding on future gentrification claims.[81] In applying the standards created by *City of Kyle* and *Louisiana ACORN*, the court built off its precedent and bolstered roadblocks in place for organizations to prove standing.[82] This stricter standard is particularly problematic due to the important role of organizational standing in the context of gentrification.[83] Instead of creating a stricter standard, the Fifth Circuit should have joined its sister circuits in a more workable approach to organizational standing, even if just for gentrification cases.[84]

The Fifth Circuit's application of both *City of Kyle* and *Louisiana ACORN*, in conjunction with its application of *Havens*, strictly limited injuries that organizations can use to prove standing.[85] The court's previous application of the *Havens* decision had barred the use of litigation-related or pre-litigation injuries in proving standing in the Fifth Circuit.[86] Therefore, in order for TSRA to demonstrate organizational standing, it was forced to rely entirely on injuries unrelated to litigation.[87] However, in applying the standards set out in both *City of Kyle* and *Louisiana ACORN*, the court in the noted case effectively required TSRA to demonstrate that the actions it took were ones that differed from its routine activities and did not support its mission.[88] Further, TSRA was required to show that it put specific projects on hold, "'stopped everything else' and devoted all attention to the litigation in question."[89] In doing so, the Fifth Circuit has created a

80. *Id.* at 503-04 (Davis, J., concurring).
81. *Id.* at 500-03 (majority opinion).
82. *See infra* notes 85-92 and accompanying text.
83. *See infra* notes 93-107 and accompanying text.
84. *See infra* notes 108-119 and accompanying text.
85. *See Tenth St.*, 968 F.3d at 500.
86. OCA-Greater Hous. v. Texas, 867 F.3d 604, 612 (5th Cir. 2017); Ass'n for Retarded Citizens of Dall. v. Dall. Cnty. Mental Health & Mental Retardation Ctr. Bd. of Trs., 19 F.3d 241, 244 (5th Cir. 1994).
87. *See Tenth St.*, 968 F.3d at 500.
88. *Id.*
89. *See* La. ACORN Fair Hous. v. LeBlanc, 211 F.3d 298, 305 (5th Cir. 2000) (quoting Alexander v. Riga, 208 F.3d 419, 427 n.4 (3d Cir. 2000)).

new strict standard for organizations seeking to prove Article III standing.[90] Even organizations having suffered expensive and timely injuries on behalf of their clients may struggle to meet such a rigorous standard.[91]

As a result of this heightened standard, the noted case has left organizations limited options of recovery under FHA claims, an issue that has a particularly great impact in the context of gentrification claims.[92] In short, the court did not consider the important role that organizations play in the enforcement of FHA violations specifically, creating a standard that does not serve the legislative intent of the FHA.[93] While the integrity of Article III standing is vital, the larger concern is the limitation that a narrow view of organizational injury places on the private enforcement of FHA claims.[94] Enforcement of the FHA relies heavily on the ability of organizations to bring suit on behalf of clients affected by discrimination.[95] Thus, the FHA has been interpreted broadly so that all who experience discrimination will fall under its coverage.[96] In addition, the FHA itself endorses methods of private enforcement, stating that "the proven efficacy of private nonprofit fair housing enforcement organizations and community-based efforts makes support for these organizations a necessary component of the fair housing enforcement system."[97] Therefore, in adopting and further limiting the *Havens* decision through the noted case, the Fifth Circuit neglected important public policy favoring broad interpretation of Article III standing, an action which some have gone

90. *See Tenth St.*, 968 F.3d at 500.

91. *See id.*

92. *See id.*

93. *See infra* notes 95-107 and accompanying text.

94. Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers, 141 F.3d 71, 87-88 (3d Cir. 1998) (Nygaard, J., concurring in part and dissenting in part).

95. *Id.* The FHA recognizes the important role that organizations play in enforcement by allowing courts to award attorney's fees for private attorneys taking FHA cases, expanding the lengths of statutes of limitations, and removing limitations on punitive damages. Dan Hooks, Who Can Sue Under the Fair Housing Act? 22 (July 13, 2016) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=280937 [https://perma.cc/B7ZK-XN7Z].

96. *Montgomery Newspapers*, 141 F.3d at 88 (Nygaard, J., concurring in part and dissenting in part); Hooks, *supra* note 95, at 22.

97. *Montgomery Newspapers*, 141 F.3d at 88 (Nygaard, J., concurring in part and dissenting in part) (quoting Housing and Community Development Act of 1992, sec. 905(a)(9), Pub. L. No. 102-550, 106 Stat. 3672, 3869).

so far as to say will "eviscerat[e] the statutory scheme of the Fair Housing Act."[98]

The important role of organizational standing is further demonstrated by the inadequacy of associational standing in gentrification cases.[99] Plaintiffs pursuing a claim under a theory of associational standing in gentrification cases face unique challenges.[100] When an organization is pursuing a claim under the theory of organizational standing, it can allege injuries to the organization itself, often those associated with remedying damage done by the defendant.[101] However, an individual seeking recovery in a gentrification case must prove that the individual themselves suffered harm.[102] This poses a roadblock because, historically, the effects of gentrification are felt not overnight, but over the course of generations, making it exceedingly difficult to demonstrate an imminent injury.[103] While, in the noted case, the court denied TSRA's associational standing largely on factual grounds, the majority and concurrence importantly noted that TSRA's members were not at risk of suffering an imminent injury because no houses were in the demolition approval process.[104] Thus, in cases where an individual plaintiff is seeking to prevent future gentrification, that plaintiff will likely face challenges in proving that there is an imminent threat of injury, and in turn, Article III standing, because gentrification occurs over time.[105] Organizational standing becomes particularly important then in providing another, or sometimes, the exclusive, pathway to recovery for injured parties.[106]

Lastly, the Fifth Circuit unnecessarily extended the *Havens* holding to gentrification cases despite legislative intent to the contrary, missing an opportunity to reevaluate the standard for organizational

98. *See id.* at 87; Tenth St. Residential Ass'n v. City of Dallas, 968 F.3d 492, 500 (5th Cir. 2020).

99. *See infra* notes 101-107 and accompanying text.

100. *See Tenth St.*, 968 F.3d at 501-02.

101. *See id.* at 500.

102. *See id.* at 501.

103. *See Background: Gentrification and Displacement*, UPROOTED PROJECT, https://sites.utexas.edu/gentrificationproject/gentrification-and-displacement-in-austin/ [https://perma.cc/YY97-K8V5] (last visited May 18, 2021).

104. *Tenth St.*, 968 F.3d at 501-03, 504.

105. *See id.* at 501; Tiffany Ansley, *Gentrification and Mediation: Where a Single Pronunciation and Differing Perceptions Converge*, 11 CARDOZO J. CONFLICT RESOL. 585, 596-97 (2010).

106. *See Tenth St.*, 968 F.3d at 500-01.

standing.[107] Under the broad application applied in the Second, Seventh, and Eighth Circuits, TSRA would have clearly established injury-in-fact.[108] Analogous to the facts of *Village of Bellwood v. Dwivedi*, the time and money that TSRA spent on litigation would constitute an injury-in-fact.[109] Further, even under the intermediate standard applied by the Sixth Circuit, TSRA would likely be able to demonstrate injury-in-fact.[110] While something independent of litigation costs is required to demonstrate that an organization has suffered an injury in the Sixth Circuit, resources spent on pre-litigation research have been found to be sufficient.[111]

In continuing to apply the narrow view of *Havens*, the Fifth Circuit effectively created a circumstance where an organization's expense done in preparation for litigation, no matter how costly, is not as valuable in showing standing as expenses that are miniscule in comparison but unrelated to litigation.[112] For this reason, the Fifth Circuit should have used the noted case as an opportunity to join its sister circuits with less stringent standards but instead it has created the strictest standard of all.[113]

In its application of *Havens*, the Fifth Circuit expressed concerns that, without such a limited interpretation, organizations would be able to manufacture an injury through litigation expenses.[114] The court felt that this concern outweighed the policy implications of narrowing the scope of standing in FHA cases.[115] However, a broader interpretation of *Havens* does not preclude courts from addressing situations of manufactured standing as they arise.[116] The broad interpretation of *Havens* can safely be adopted because courts still have the ability to

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107. *See* Ass'n for Retarded Citizens of Dall. v. Dall. Cnty. Mental Health Retardation Ctr. Bd. of Trs., 19 F.3d 241, 244 (5th Cir. 1994).

108. *See* Moya v. U.S. Dep't of Homeland Sec., 975 F.3d 120, 130 (2d Cir. 2020); Vill. of Bellwood v. Dwivedi, 895 F.2d 1521, 1526 (7th Cir. 1990); Ark. ACORN Fair Hous., Inc. v. Greystone Dev., Ltd., 160 F.3d 433, 434-35 (8th Cir. 1998).

109. *See Tenth St.*, 968 F.3d at 504; *Vill. of Bellwood*, 895 F.2d at 1526.

110. *See* Fair Hous. Council, Inc. v. Vill. of Olde St. Andrews, Inc., 210 F. App'x 469, 475 (6th Cir. 2006).

111. *Id.*

112. *See* OCA-Greater Hous. v. Texas, 867 F.3d 604, 611-12 (5th Cir. 2017); NAACP v. City of Kyle, 626 F.3d 233, 238 (5th Cir. 2010).

113. *See supra* notes 107-112 and accompanying text.

114. Ass'n for Retarded Citizens of Dall. v. Dall. Cnty. Mental Health & Mental Retardation Ctr. Bd. of Trs., 19 F.3d 241, 244 (5th Cir. 1994).

115. *See id.*

116. *See* Nnebe v. Daus, 644 F.3d 147, 157 (2d Cir. 2011) (noting that, while some plaintiffs try to do so, in this case, the plaintiff is not trying to merely manufacture standing through legal expenses).

address matters of manufactured standing on a case-by-case basis.[117] Without a broader view, organizations are forced to pursue FHA claims under a theory of organizational standing based on costs unrelated to litigation—made even more difficult by the standard created in the noted case.[118]

V. CONCLUSION

The Fifth Circuit's decision in the noted case created an unworkable standard for plaintiffs seeking to show an injury under a theory of organizational standing.[119] Faced with a case of first impression on the relationship between Article III standing and gentrification, the court missed an opportunity to join the Second, Seventh, and Eighth Circuits in articulating a broader definition of injury-in-fact or reach a compromise like in the Sixth Circuit.[120] Instead, the Fifth Circuit strictly limited the ability of fair housing organizations to serve their intended role in the enforcement of the FHA, with troubling implications for future gentrification cases.[121]

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117. *See id.*; Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers, 141 F.3d 71, 87 (3d Cir. 1998) (Nygaard, J., concurring in part and dissenting in part).

118. *See supra* notes 85-92 and accompanying text.

119. *See* Tenth St. Residential Ass'n v. City of Dallas, 968 F.3d 492, 500 (5th Cir. 2020).

120. *See id.*

121. *Id.*; *Montgomery Newspapers*, 141 F.3d at 87 (Nygaard, J., concurring in part and dissenting in part).

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